

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Marvin Gerber, Dr. Miriam Brysk,

Plaintiffs,

vs.

Civil Action No. 2:19-cv-13726
Hon. Victoria A. Roberts

Henry Herskovitz, *et al.*,

Defendants, Jointly and Severally.

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PLAINTIFFS' MOTION TO FILE DECLARATION OF WITNESS UNDER SEAL

Plaintiffs, by and through their attorneys, hereby move, pursuant to LR 5.3(b)(2), for leave to file a Declaration of a witness under seal, and in support of the motion state as follows:

1. Plaintiffs' counsel is in the process of preparing a motion, with brief in support, requesting that the Court enter a preliminary injunction restricting the protesting activity of the Protester Defendants ("Protesters"). The motion is being filed before the Defendants have filed their Answers to the First Amended Complaint in accordance with *Silber v. Barbara's Bakery, Inc.*, 950 F. Supp. 2d 432, 440-41, 443, note 9 (E.D.N.Y. 2013), and *Gidatex, S.R.L. v. Campaniello Imports, Ltd.*, 13 F. Supp. 2d 417, 419 (S.D.N.Y. 1998).

2. In support of the motion, Plaintiffs will be attaching several affidavits and declarations, the latter being executed and filed pursuant to 28 U.S.C. § 1746, in lieu of a notarized affidavit due to the shelter in place restrictions being followed as a result of the corvid 19 virus pandemic.

3. One of the declarants is 81 years old, lives alone and has serious health issues. The declarant fears potential retaliation if the declarant's identity is disclosed and accordingly has personal security concerns. The declarant therefore requests that his/her identity not be disclosed.

4. Plaintiffs are accordingly requesting that the Court grant leave for the individual's signed Declaration to be filed under seal pursuant to LR 5.3(b).

5. In accordance with LR 5.3(b)(3)(A), the following information is provided:

- i. An index identifying the document to be sealed is attached.
- ii. No non-party or third-party privacy interests are affected.
- iii. The proposed sealed material was not designated as "confidential" under a protective order.
- iv. The declarant is a Board Certified Psychiatrist and retired Professor of Psychiatry at the University of Michigan Medical School. The declarant is a member of the Beth Israel Congregation. Because of the physical and emotional effects that seeing the signs of the Protesters has on the

declarant, the declarant makes an effort to avoid arriving at the Synagogue prior to 11:00 A.M. on Saturday mornings, which results in the declarant missing a good part of the Sabbath service. The declarant lives alone and has concerns for his/her safety if the declarant's identity is revealed. There is ample authority allowing for affidavits to be filed under seal under comparable circumstances. *See Doe v. City of Clawson*, 915 F.2d 244 (6th Cir. 1990); *Team Obsolete Ltd. v. A.H.R.MA. Ltd.*, 464 F. Supp.2d 164 (E.D.N.Y. 2006); *Goldfaden v. Wyeth Laboratories, Inc.*, Case No. 08-10944 (E.D. Mich. 2009) (copy attached as Exhibit 1); *In re Search Warrant for 4 Contiguous Parcels, Real Pro.*, Case No. 06-x-50457 (E.D. Mich. 2006) (copy attached as Exhibit 2).

- v. A redacted copy of the Declaration is attached as Exhibit 3.
- vi. Should the Court grant the motion, Plaintiffs' counsel will send a copy of the unredacted Declaration by first class mail to Judge Roberts. The unredacted Declaration will be enclosed in a separate envelope marked "UNREDACTED VERSION OF DOUCMENT TO BE SEALED PURSUANT TO LR 5.3(B)(iii)." The unredacted copy will highlight the name of the declarant.

6. Pursuant to LR 7.1(2)(A), Plaintiffs' counsel left telephone messages on the voice mail of defense counsel, explaining the nature of the motion, but did not receive any responses.

WHEREFORE Plaintiffs request that their motion to file the unredacted Declaration under seal be granted.

Respectfully submitted,

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/s/ Marc M. Susselman
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Dated: May 4, 2020

MEMORANDUM OF LAW

In support of the motion, Plaintiffs rely on the averments contained therein and on the cases cited in ¶5(iv).

Respectfully submitted,

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Dated: May 4, 2020